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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,932	07/15/2003	Rebecca L. Engel	038469-0210	6826

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EXAMINER
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THANH, LOAN H

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 09/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/619,932

Applicant(s)

ENGEL ET AL.

Examiner

LoAn H. Thanh

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.  
2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-8,10-13 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,3-8,10-13 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/17/06 has been entered.

### ***Response to Amendment***

The rejection as applied by Pagan (US 6,024,730) and Goode (US 5,507,751) has been overcome in response to applicant's amendment filed 07/17/06.

### ***Claim Objections***

Claims 1, 3 are objected to because of the following informalities:

In claim 1, applicant is to replace "catheter" with ---cannula--- in the preamble to provide proper antecedent basis. See amended claims filed on 10/17/05 by applicant.

In claim 3, there appears to be a typo. Examiner suggests to amend "and" to ---are---. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3,4,6,8,10,12 are rejected under 35 U.S.C. 102(b) as being anticipated by Quinn (US 5,201,723).

Quinn discloses a venous cannula comprising a body having proximal and distal end, having a wall defining a lumen , a plurality of inlet apertures 16 or 22 ( see figures 1-2, 7) and which allows fluid flow through the lumen and wherein each aperture has a longer major axis and shorter minor axis such that the longer major axis is perpendicular to the longitudinal axis of the lumen as shown in figures 1-2 and 7 . Quinn teaches the invention provides advantages to reduce kinking.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3-8,10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginsburg (US 5,180,364).

Ginsburg discloses a cannula comprising a body having a proximal and distal end, a lumen therethrough, and a plurality of inlet apertures in the wall of the cannula to allow fluid flow through the lumen. See figures 1A and 10. Ginsburg disclosed the apertures/passageways maybe any type of opening, such as holes, slits, vents and the like which afford communication between the central lumen 16 and a region exterior to the cannula/catheter 10. However, Ginsburg does not explicitly show these openings to have a major and minor axis, which is perpendicular to the longitudinal axis of the cannula/catheter 10 in figures 1a or 10. Ginsburg shows a different embodiment figure 1B, which has a plurality of holes of any shape size and position along the distal end 22 of the catheter body 214. The passageways are also disclosed as randomization in configuration as well as location. Specifically, Ginsburg shows an aperture which is oval, eye-shaped, or a shape having two corners having a major axis which is perpendicular to the longitudinal axis of the catheter or cannula. Ginsburg discloses it is well within the scope of one of ordinary skill to modify invention with the alternatives to the size shape and location. See column (col.) 5, lines 14-34, col. 6, lines 52-55, and col. 7, lines 55-64. Thus, it would have been obvious to one of ordinary skill in the art of catheter/cannula to provide oval apertures which are taught by Ginsburg in the uniform configuration (evenly distributed) with a major axis that is perpendicular to the longitudinal axis of the catheter as mere alternatives of different types, size or shape of apertures. Further, with respect to claims 7 and 13, it would have been obvious to modify the rows to provide them in an offset position for the same reasons as above in

order to provide a plurality of fluid flow to the target tissue for providing emergency perfusion of a desired vessel.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1,3-8,10-13 have been considered but are moot in view of the new ground(s) of rejection.

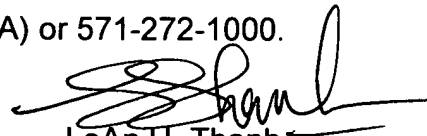
With respect to the term "venous cannula", the Examiner has given the term "venous cannula" patentable weight in interpreting the claim language. Applicant is reminded that applicant is claiming a device claim and the name of the device does not impart structurally distinguishing features when interpreted with the prior art of record. It is given the broadest interpretation.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LoAn H. Thanh whose telephone number is (571) 272-4966. The examiner can normally be reached on Mon. - Fri. (First Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



LoAn H. Thanh  
Primary Examiner  
Art Unit 3763

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